

This letter discusses nexus, local taxes and drop shipments. See 86 Ill. Adm. Code Part 270 and 86 Ill. Adm. Code 130.225. (This is a GIL.)

May 23, 2006

Dear Xxxxx:

This letter is in response to your letter dated August 1, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I would like to request a general information letter in response to the following issues.

Specifically, I am inquiring as to whether any of the following scenarios would establish sufficient nexus to subject a foreign corporation to Illinois income tax and/or require registration for and collection of Retailers' Occupation Tax or use tax.

The company in question (AAA) is incorporated under the laws of STATE. AAA sells hockey jerseys at retail through an internet site. Basic jerseys are purchased from a vendor located outside Illinois. An unrelated Illinois business (BBB) performs embellishment services (stitching of letters and/or numbers) on the jerseys prior to them being shipped to the end customer. The letters and numbers being stitched on the jerseys are provided by BBB. AAA does not have any other property or employees located in Illinois. All shipments are made via common carrier.

Scenario 1: AAA orders jerseys from its vendor which are drop shipped directly to BBB in Illinois. BBB stores the jerseys until AAA receives an order for a jersey at which time BBB performs its alterations and drop ships the jersey to the end customer on behalf of AAA.

Scenario 2: AAA orders jerseys from its vendor which are shipped to and stored by AAA in STATE. Upon receiving an order for a jersey, AAA ships the jersey to BBB in Illinois

who performs alterations on the jersey and drop ships the jersey to the end customer on behalf of AAA.

Scenario 3: Same as scenario 1 except that, instead of BBB drop shipping the jersey to the end customer, the jersey is shipped to AAA in STATE who then ships the jersey to the end customer.

Scenario 4: Same as scenario 2 except that, instead of BBB drop shipping the jersey to the end customer, the jersey is shipped to AAA in STATE who then ships the jersey to the end customer.

Scenario 5: AAA purchases jerseys directly from BBB which are then drop shipped by BBB to the end customer on behalf of MA.

Please provide separate guidance on each of the above scenarios based on whether the jersey is shipped to the end customer in Illinois vs. out of state.

If you need further information please contact me.

DEPARTMENT'S RESPONSE

Determinations regarding the subject of nexus are normally very fact specific. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information. The following guidelines, however, may be useful to you in determining whether your company would be considered a retailer subject to sales tax collection obligations.

Whether a retailer is subject to Illinois Retailers' Occupation Tax (sales tax) liability or is required to collect Illinois Use Tax from its Illinois customers depends upon whether that retailer has sufficient "nexus" with the State of Illinois so that the retailer will be subject to Illinois law. The following information outlines the principles of nexus.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Zehnder*, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and the customer must remit the amount directly to the State. The Use Tax rate is 6.25%.

For information regarding local taxes in Illinois, we refer you to the Department's regulation, "Home Rule Municipal Retailers' Occupation Tax," at 86 Ill. Adm. Code Part 270. Although this regulation deals with the home rule municipal sales tax, the principles outlined in this regulation apply to all local taxes administered by the Department. For information regarding drop shipments, we refer you to the Department's regulation "Drop Shipments" at 86 Ill. Adm. Code 130.225. Taking a look at the Department's letters is also useful.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
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